

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.3200 Taxability in Other State (IITA Section 303)
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TITLE 86: REVENUE

**PART 100
INCOME TAX**

SUBPART K: NON-BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section 100.3200 Taxability in Other State (IITA Section 303)

a) General definition

- 1) For purposes of allocation of nonbusiness income and for purposes of the sales factor used in apportioning business income, a taxpayer is taxable in another state if:
 - A) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or
 - B) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not subject the taxpayer to such a tax.
- 2) A taxpayer is subject to one of the specified taxes in subsection (a)(1) in a particular state only if he is subject to such tax by reason of income-producing activities in such state. For example, a corporation which pays a minimum franchise tax in order to qualify for the privilege of doing business in a state is not subject to tax by that state within the meaning of subsection (a)(1) if the amount of such minimum tax bears no relation to the corporation's activities within such state. Further, a taxpayer claiming to be taxable in another state under the tests set forth in subsection (a)(1) must establish not only that under the laws of such state he is subject to one of the specified taxes, but that he, in fact, pays such tax. If a taxpayer is subject to one of the taxes specified in subsection (a)(1) but does not, in fact, pay such tax, such taxpayer may not claim to be taxable in the state imposing such tax under the test set forth in this subsection (a)(2). On the other hand, if a taxpayer is not subject in a given state to any of the taxes specified in subsection (a)(1) but such taxpayer establishes that his activities in such state are such as to give the state jurisdiction to subject him to a net income tax, then under the test set forth in this subsection (a)(2), the taxpayer is taxable in such state, notwithstanding the fact that such state has not enacted legislation subjecting him to such tax. In the case of any state other than a foreign country or political subdivision thereof, the determination of whether such state has jurisdiction to subject the taxpayer to a net income tax will be determined under the Constitution and statutes of the United States.

Such a state does not have jurisdiction to subject the taxpayer to a net income tax if it is prohibited from imposing such a tax by reason of the provisions of Public Law 86-272, 15 USC Sections 381-385. In the case of any foreign country or political subdivision thereof, the determination of whether such state has jurisdiction to subject the taxpayer to a net income tax will be determined as if the foreign country or political subdivision were a state of the United States or political subdivision thereof.

- b) Examples. Section 100.3200 of this Part may be illustrated by the following examples:
- 1) Example 1. A corporation, although subject to the provisions of the net income tax statute imposed by X state, has never filed income tax returns in that jurisdiction and has never paid income tax to X. For purposes of allocation and apportionment of A's income, A is not taxable in X state because it does not meet either test specified in subsection (a)(1) or (2).
 - 2) Example 2. B corporation, an Illinois corporation, is actively engaged in manufacturing farm equipment in Y foreign country. Y does not impose a franchise tax measured by net income or a corporate stock tax. It does impose a franchise tax for the privilege of doing business, but B corporation is not subject to that tax because it applies only to corporations incorporated under Y's laws. Y also imposes a net income tax upon foreign corporations doing business within its boundaries, but B is not subject to that tax because the income tax statute grants tax exemption to corporations manufacturing farm equipment. For purposes of allocation and apportionment of B's income, B is taxable in Y country. B does not meet the test specified in subsection (a)(1) of, but does meet the test specified in subsection (a)(2), since Y has jurisdiction to impose a net income tax on B.

(Source: Amended at 24 Ill. Reg. 10593, effective July 7, 2000)